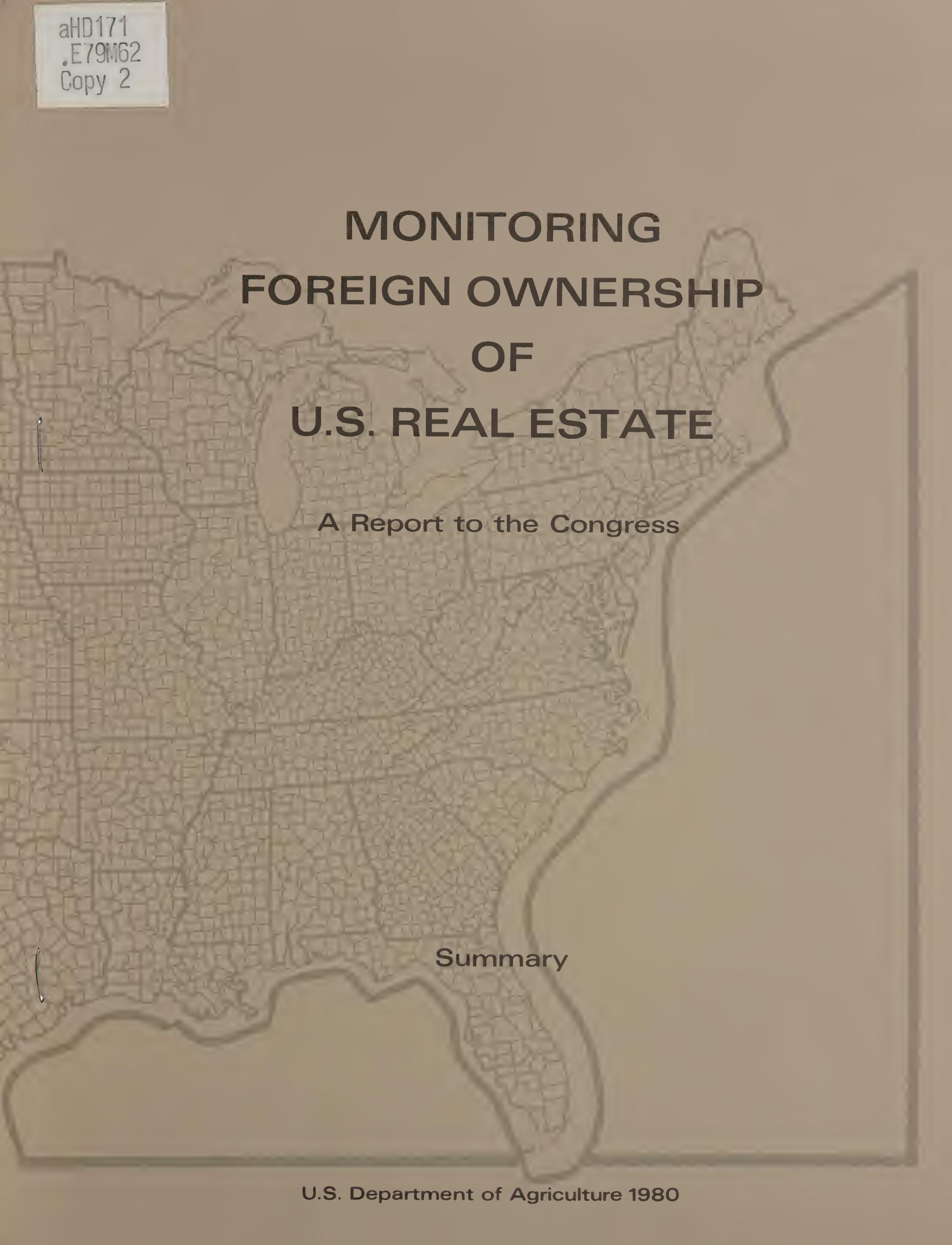


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MONITORING FOREIGN OWNERSHIP OF U.S. REAL ESTATE

A Report to the Congress

Summary

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Summary

A Report to the Congress

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Prepared by

Economics, Statistics, and Cooperatives Service

U.S. Department of Agriculture

1980

PREFACE

The direct investment portion of the Foreign Investment Study Act of 1974 concluded among other things that reliable information about foreign holdings and transfers of U.S. real estate was incomplete and elusive. Therefore, the authors of the International Investment Survey Act of 1976 (IISA) inserted a special provision--Section 4(d)--to require study of the feasibility of monitoring foreign investment.

Accordingly, a study was conducted during the year ending September 1979 by a team of contractors and USDA researchers. Its purpose was to examine the feasibility of monitoring systems. The resulting full report upon which this summary report is based thus provides no new estimates of the quantity of foreign-held real estate, although one chapter does summarize the data available from several sources.

Real estate represents only about 5 percent of the equity ownership of \$41 billion direct foreign investment in the United States. However, the small share does not imply a lack of need for a system or procedure to determine landownership. There is a concern about the lack of adequate information on land ownership regardless of citizenship or residence. Thus, this report not only covers data on foreign investment in real estate but also data systems for landownership generally.

Recently, the Department of Commerce has initiated new procedures under IISA to obtain information on inbound direct investment in real estate. These procedures have been taken into account to the extent possible in this report, as have the procedures of the Department of Agriculture under the recent Agricultural Foreign Investment Disclosure Act, requiring foreign owners of U.S. agricultural real estate to report their holdings to the Department.

ACKNOWLEDGMENTS

Many persons and organizations participated in the study and preparation of the full report. First, the authors of the various chapters should be given special recognition for the timely completion of their assignments under difficult circumstances. Others who contributed substantially are: Don Barr, Commonwealth of Massachusetts; Clifford A. Zoll and Donald A. Zoll of Clifford A. Zoll, Blackmore and Associates; Hartmut Zeimann, Canadian Institute of Surveying; Hans K. Larsen, University of New Brunswick; Ranne Warner, Commercial Union Properties; Jim McMullen, Real Estate Service, Inc.; Gary Barth, Jones Lang Wotton; and the Lincoln Institute of Land Policy. The project profited from the suggestions of outside reviews:

Hugh Brodkey, Chicago Title and Trust; William Sayre, Continental Illinois Bank; Noel Nellis, Morrison and Forester; Kenneth Kerin, National Association of Realtors; Steve Bittel of Bittel, Langer and Blass; James Wead, J.K. Wead and Associates; and Kenneth Dueker, University of Iowa. Their reviews were the personal views of the reviewers and not necessarily those of the institutions or organizations with which the reviewers were associated. Oversight and report review was obtained from a committee of Federal agency representatives chaired by Milo Sunderhauf, Office of Federal Statistical Policy and Standards, Department of Commerce; other members of the Federal oversight and review committee were Raymond Dideriksen, Soil Conservation Service, Department of Agriculture; Truman Goins, Water Resources Coordinator, Department of Housing and Urban Development; Wynne Maule, Forest Service, Department of Agriculture; Ross D. Netherton, Federal Highway Administration, Department of Transportation; John O. Phillips, National Oceanic and Atmospheric Administration, Department of Commerce; John Behrens and Jacob Silver, Bureau of Census, Department of Commerce; Grover B. Torbert, Bureau of Land Management, Department of the Interior; Marshall Wright, U.S. Geological Survey, Department of Interior; Milton Berger, office of Foreign Investment in the United States, Department of Commerce; Charles Ellett, Regulatory Policy and Reports Management, Office of Management and Budget; Molly Frantz, Natural Resources Division, Office of Management and Budget; Harry Gruebert and Gene Clapp, Office of International Taxation, Department of the Treasury; George Kruer and James Bomkamp, Bureau of Economic Analysis, Department of Commerce; and Robin Raffel, Office of Investment Affairs, Department of State.

Doris Coe and Verla Rape typed most of the USDA manuscript. Mrs. Rape also arranged contractors' meetings, maintained records and project budgets, and assisted in countless ways to facilitate progress.

Peter DeBraal guided the studies associated with methods 1 and 2 and David Moyer with methods 3 and 4. Karl Gertel directed the economic studies which appear as chapters 13, 14 and 15. DeBraal, Moyer, and Gertel also participated in the overall project design and implementation.

Hundreds of attorneys, brokers, public officials and citizens have contributed to the understanding fo the authors, reviewers, and editors. We hope that understanding is properly reflected in this report.

1979

Gene Wunderlich
ESCS
U.S. Department of Agriculture

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EXECUTIVE SUMMARY

Section 4(d) of the International Investment Survey Act (IISA) called for "... a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system...." This is a brief summary of that study.

The 4(d) provision reflected growing public concern about foreign purchase of U.S. land and consequent awareness of deficiencies in both foreign investment and landownership data. The study was conducted by a team of contractors and USDA researchers. It included inquiry into the real estate industry; State, Federal, and foreign regulations; economic impacts; conveyancy; and taxation. The study focused on the feasibility of four methods to obtain information on foreign ownership of U.S. real estate:

1. A centralized compulsory Federal registration system exclusively devoted to reports by foreign owners of U.S. real estate.
2. A compilation of data on foreign holdings of U.S. real estate from Federal offices such as the Bureau of Economic Analysis, the Securities and Exchange Commission, and the Internal Revenue Service already requiring reports on investment, income, or other related matters.
3. Foreign holdings data from a multipurpose land information system using information collected at the local level and serving a wide range of local, State, and national information needs.
4. Foreign holdings data from nationwide, periodic surveys of all landownership.

All four methods are technically and legally feasible. The multipurpose land information and survey methods are more costly and cannot be economically justified for obtaining national-level information solely on foreign ownership of real estate.

Neither limitations on, nor uses of, the data were specified in 4(d). The four methods studied would provide different kinds and amounts of information on the extent and nature of foreign investment in land. Several questions must be considered. For example: Is the information to be used primarily to estimate the stock and flow of foreign investment or to specify the characteristics of all U.S. landownership? How best should the Federal Government's data needs relate its data needs to those of State and local governments and the private sector? Are data to be used for estimating certain general parameters of foreign investment or landownership or

are the data intended to describe a complete profile or a dossier on each individual owner, tract, or transaction? How precise, accurate, specific, and current should the data be?

Consideration of a monitoring system should also take into account the fact that only 1 percent of the land is foreign owned and that real estate comprises only 2 to 5 percent of total current foreign investment. Therefore, consideration must also be given to the difficulty of isolating foreign owners of U.S. real estate in the total population of landowners or investors.

An advantage of a central registry of foreign ownership of land (method 1) is that it yields land-specific data and can be designed to trace successive land transactions. Another advantage is self selection--the burden of identifying reporters is on the owners themselves. The disadvantage is that it does not provide comparable data on domestic owners. It also requires a specialized program, including a system of penalties and enforcement, that is estimated to cost over \$4 million annually.

The main advantage of compiling data from existing sources (method 2) is its relatively low cost, estimated to be less than \$1 million annually. Because it relies upon existing information sources, only a portion of overhead costs need be assigned to the foreign owner information. Only the marginal costs of additional information, borne largely by the respondents, are incurred. A disadvantage is that the data now acquired on foreign ownership of real estate varies by source. The Department of Agriculture obtains information only on agricultural land which includes forestry. USDA classifies land by major use and method of holding (sole proprietor, corporation, etc.) but not by type of industry. DOC classifies principally by industry or enterprise and on some surveys has another land use classification. Other potential sources such as the Securities and Exchange Commission and Internal Revenue Service contain information incidental to their regulatory or revenue purpose and is currently inaccessible or not timely.

Advantages of the third and fourth methods derive from their being part of a comprehensive land information system. Data on foreign owners and their land could be compared directly to data on U.S. owners and their land. The network of local, State, and Federal systems of the third method provides data for a variety of purposes such as title assurances, taxation, land use planning, research and policy formulation. Developing a nationally integrated system with capabilities to perform local government functions would cost an estimated \$1.2 billion more than current expenditures on land data systems. Once developed, operating costs to provide the current level of services would be no more than at present because the cost of isolating information on foreign ownership of U.S. real estate would be relatively small.

Periodic surveys of landownership including residence or citizenship of owners (method 4) have the advantage of producing data to compare foreign owners and foreign-held land with U.S. owners and U.S.-held land. Although less expensive than developing a network system (method 3), nationwide surveys would not provide information on individual foreign owners. Neither would they provide data for local government functions such as assessing,

recording, and planning. Also, large costs recur with successive surveys. General purpose surveys with sufficient observations to provide useable data on foreign ownership could cost \$60 to \$120 million.

The cost estimates above, as stated without the qualifications contained in the main study, should be regarded as rough, order-of-magnitude estimates. Furthermore, they refer to hypothetical scenarios representing types or classes of methods, not particular methods now in operation. Serious consideration of adopting any particular method should include more detailed cost analyses.

Comparison of the four methods suggests:

- ° If only data on foreign-held real estate, including specific holdings, are needed, method 1, a centralized reporting system (such as disclosure of foreign ownership of agricultural land required by the Department of Agriculture, expanded to urban real estate) is adequate.
- ° If data on foreign-held real estate is only to improve estimates of foreign investments, not maintain an inventory of foreign-held parcels of land and obtain information on domestic ownership, then there is little reason to go beyond method 2, procedures now employed by the Department of Commerce in the surveys of inward direct investment.
- ° If interest in foreign-held real estate is an aspect of a wider concern about absentee ownership or ownership generally, then foreign ownership could be reported in relation to features of domestic ownership (methods 3 or 4).

Several questions and issues transcend comparison of the feasibility of one data system versus another. In addition to the chapters which evaluate the four methods, other chapters describe information needed for solving economic, social, or political problems associated with landownership, examine issues of secrecy and disclosure, suggest the intergovernmental exchange of foreign investment information, and reveal the treatment of foreigners under U.S. tax laws. These questions are reviewed in the following summary.

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INTRODUCTION

Is it possible to monitor foreign holdings and transfers of U.S. real estate?^{1/} The almost obvious answer is "yes," but to what level of detail do we wish to proceed? A monitoring system can provide general impressions, gross estimates, detailed estimates, or complete and thorough enumerations of some or all classes of foreign owners. The system can go to any legal and economic lengths to acquire extensive data on every parcel of land. The answer in this report is a qualified "yes," and the subsequent discussions pertain directly or indirectly to such a qualification.

This report is a direct result of the mandate in Section 4(d) of the International Investment Survey Act of 1976:

Sec. 4(d). The President shall conduct a study of the feasibility of establishing a system to monitor foreign direct investment in agricultural, rural, and urban real property, including the feasibility of establishing a nationwide multipurpose land data system, and shall submit [an interim report of his findings and conclusions to the Congress not later than two years after the enactment of this Act and a final report not later than three years after the enactment of this Act.]^{2/}

The Department of Agriculture assumed lead agency responsibility for the 4(d) study as a result of recommendations by an interagency committee chaired by the Office of Federal Statistical Policy and Standards, Department of Commerce.^{3/} That committee has carried out oversight and review functions for the study.

^{1/} Real estate and real property are used synonymously to mean land and generally whatever is affixed to the land.

^{2/} 22 U.S.C. §3103(d) (1976). The bracketed portion is an amendment under Pub. L. No. 95-381, 92 Stat. 726 (1978), which extended the reporting date 1 year, from Oct. 11, 1978, to Oct. 11, 1979, in recognition of the delay in funding. Funds for the study were not received until September 1978. Pub. L. No. 95-355, 92 Stat. 523 (1978).

Primary responsibility for coordination of functions under the International Investment Survey Act was placed in the Department of Commerce by Exec. Order No. 11,961, 3 C.F.R. 86 (1978), and Exec. Order No. 12,013, 3 C.F.R. 147 (1978).

^{3/} Letter from James T. McIntyre, Director, Office of Management and Budget, to Bob Bergland, Secretary of Agriculture (January 11, 1978).

By inserting a special provision on real estate into the act, Congress recognized the peculiar problems of obtaining data from this fragmented, secretive, individualized, often localized industry. Beyond that recognition, however, Congress did not provide guidelines for or restrict the scope, methods, or expected results of the study. Therefore, the plan of study was based on a strict reading of the 4(d) provision: it was to be of the feasibility of monitoring real estate investment, not actually enumerating or estimating such investment; it was to encompass all uses of real estate, urban and rural; some, or at least one, system examined would be multipurpose--that is, provide land data in addition to foreign ownership. The context of the Act meant that the feasibility of the system or systems would be from a Federal perspective, although the language "nationwide" and "multipurpose" provided the option for intergovernmental systems.

The act allowed the analysis to assume a Federal role of actively seeking and finding foreign owners of real estate, or of passively accepting data supplied by the foreign owners. The act also permitted the required data to be statistical (facts related to a class or group) or intelligence (a dossier or set of facts on specific owners). Congress apparently wanted evaluations of systems exclusively devoted to foreign investment in real estate and systems devoted to a larger quantity of land data but which also could provide foreign ownership information as a data subset.

From the stated or implied alternatives--exclusive versus multipurpose, active versus passive, and intelligence versus statistical systems--eight possible systems or models were stated and then reduced to a manageable four scenarios: (1) a Federal registration system, (2) modified current reporting, (3) a national network of multipurpose systems, and (4) periodic surveys. These scenarios are discussed in detail in chapters 5, 6, 7, 10, 11, and 12 of the full report.

Feasibility was defined to include technical, economic, administrative, legal, and political criteria. It was not designed in yes or no terms, but rather as tradeoffs; that is, if a system of records were designed to maintain and access data on the ownership of each parcel of land, the cost (whether in cash, effort, or disclosure) would be higher than a system to sample informed persons periodically on general trends in ownership. The purposes served by each of such systems would differ greatly. Feasibility of a monitoring system can be measured only in terms of its purposes and objectives. This report attempts to illuminate choices among, not merely assume, such purposes and objectives.

An inquiry into the feasibility of monitoring foreign ownership of real estate appears to assume that such monitoring is needed and desirable. The broader issues of the informational needs of society are beyond the scope of this inquiry. Nevertheless, aspects of this broader issue such as (1) the right to know or the right not to be known, (2) the uses of information for economic or political power, or (3) the public and private interests in knowledge influence the feasibility of a system to monitor foreign ownership of U.S. real estate in at least five ways:

- o The amount and specificity of data. In monitoring real estate, what data are needed about the owner, the property and its use, and the method of holding, acquiring, and financing?

- o The currency of data. How frequently are the data collected and how soon are they available after collection?
- o The access to specific records, data, and information. Who may obtain what data and under what conditions?
- o The responsibility for providing, collecting, storing, processing, and accessing data, and the burden of cost. Information is valuable and costly. Who pays? What and how much information is a public good?
- o The uses of data. What data are needed for analysis and interpretation, public policy, commercial needs, or merely general curiosity?

The full report contains three kinds of chapters: background, evaluation, and general inquiries. The general inquiries are limited to an economic evaluation of foreign investment in real estate (chapters 13 and 15) and a legal view of land records and the disclosure of ownership (chapter 16). The chapters concerned most specifically with the four scenarios are 5, 6, 7, 10, 11, and 12. The remainder of the chapters provide the setting for evaluation of the scenarios (chapters 2, 3, 4, 8, and 14); the development of technical issues--Federal taxes (chapter 17), international information exchange (chapter 18), and cadastres in other countries (chapter 9); an analysis of the best available data (chapter 19); and an examination of the foreign investor as an absentee landowner (chapter 20).

The report attempts to provide guidance on the development and use of systems which provide data on landownership generally and foreign landownership particularly.

FOUNDATIONS

Prior to examining the feasibility of monitoring systems, it is helpful to understand the context in which they are discussed; that is, the real estate transaction process in the United States, State controls and reporting requirements, regulations and reporting requirements abroad, land record systems in the United States, land data systems abroad, and available data on foreign landownership.

The Real Estate Industry and the Foreign Investor

Foreign investors come from all over the world, have different reasons for investing in U.S. real estate, and seek different types of property. Those investing the most money come from Canada and Western Europe. Many of the foreign investors feel that U.S. real estate provides protection from political turmoil and inflation in their homeland. The real estate may provide other benefits as well, principally appreciation and cash flow. The deterioration of dollars in the world currency market has made U.S. real estate more attractive to foreigners who hold strong currencies.

In buying U.S. real estate, foreign investors contribute to the higher prices paid for some properties, but they are not establishing the higher prices--they are just a part of the U.S. real estate market.

The activity of the majority of foreign investors blends into the U.S. market. The investors, their employees, or other representatives contact U.S. brokers, who sell property to them. If an appraisal is desired, it is made by a professional U.S. appraiser. When financing is desired, foreign investors use the same channels an American would use: U.S. title companies, financial institutions, property management firms, attorneys, abstractors, surveyors, and so on. Foreign investors pay property taxes; they buy hazard insurance; they try to avoid, but not necessarily evade, income taxes.

One difference is the foreigners' more extensive use of U.S. commercial banks and the real estate divisions of stock brokerage firms for advice and referrals. Another is that Canadians may use Canadian banks for financing and Canadian personnel for property management and other purposes. On the whole, however, it is quite difficult to distinguish Canadian behavior in the U.S. market from that of U.S. citizens.

U.S. real estate brokers who deal with foreign investors do not seem to treat them differently. Brokers may report that they represent an undisclosed, wealthy foreign real estate investor, which may create an aura of mystery; but often such a veil serves only to protect the broker who does not want other brokers to reach his client.

Alternatively, the foreign investor may insist on secrecy, but certainly many Americans have done the same with cooperation from the real estate business community. Many foreign investors do want anonymity, but their reasons are not necessarily just to hide from legal authorities here or in their homeland.

Experienced brokers are careful about transmitting information they hold. They prefer to divulge information about property and people only to those in a position to help them or cooperate with them in completing a sale. They are sensitive to the possibility that property could be sold or clients approached from "around them." So they protect their information by limiting disclosure.

Appraisers protect information similarly. If their clients had at their fingertips the same information that appraisers do, it would obviate the need for an appraisal, at least in some situations. Still, appraisers are glad to share information with other appraisers to establish reciprocity, thus making assignments more manageable.

Property managers will share aggregate data but not release performance statistics on an individual building. That, they feel, could invite competition or present other problems.

There are other sources of information about real estate and ownership. Information is held by title companies, lending institutions, lawyers, certified public accountants, surveyors, tax rolls, courthouse records, State governments, and Federal Government agencies (Department of Housing

and Urban Development, Internal Revenue Service, Department of Agriculture, Department of Commerce, Census Bureau, Department of Transportation, etc.). However, pulling it all together, given present diversity and noncomparability in data sources and uses, is difficult, if not close to impossible.

State Controls and Reporting Requirements

An examination of State laws dealing with foreign ownership, acquisition, or use of real estate as an aid to designing information systems and as a source of foreign investment information reveals a wide range of attitudes. Some States have no legislative concerns for foreign investment, others require a varying degree of reporting, while still others prohibit foreign acquisition of real estate in rural areas. In addition, the record of enforcement varies so significantly that only a few States, such as Iowa, are of much value as sources of information.

There are 16 States with major landownership and use restrictions: Arkansas, Connecticut, Illinois, Indiana, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Dakota, Oklahoma, Pennsylvania, South Dakota, and Wisconsin. Fifteen additional States have minor restrictions: Alaska, Arkansas, California, Georgia, Hawaii, Idaho, Kansas, Maryland, Montana, Nevada, New Jersey, North Carolina, Oregon, South Carolina, Virginia, and Wyoming.

Eight States have restrictions on corporate ownership of real estate: Kansas, Kentucky, Minnesota, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin.

In most States, restrictions on foreign ownership of real estate are of late 19th-century vintage. In these States, there have been, with limited exception, no recent enforcement efforts.

Six States--Arkansas, Iowa, Minnesota, Nebraska, North Dakota, and Ohio--recently imposed reporting requirements on nonresident aliens acquiring or holding real property. The legislation in four of these States--Arkansas, Iowa, North Dakota, and Ohio--is so recent that the available data are very limited.

The two remaining States, Minnesota and Nebraska, both require nonresident alien reporting and have substantive restrictions on nonresident alien ownership. It appears that Nebraska's laws, because of loopholes, are ineffective in both areas, while Minnesota's laws are relatively effective in restricting foreign acquisition of farmland and keeping track of existing foreign ownership of farmland.

Iowa has had, for most of its history, some restrictions, often severe, on alien ownership of land. Between 1965 and 1979, nonresident aliens were allowed to own up to 640 acres of land. In 1975, in response to a perceived threat from foreign investors, as well as absentee landowners in general, the legislature passed legislation requiring extensive annual reporting by all corporations, limited partnerships, and nonresident aliens who own or lease agricultural land. In addition, a 1-year moratorium was placed on the acquisition of additional agricultural land by corporations other than

family farm corporations. That moratorium was later expanded to include trusts, and then was made permanent in 1979.

Because it was felt that many out-of-State landowners were not aware of these new reporting requirements, the legislature required the county assessors to report to the Secretary of State the name and address of every corporation, nonresident alien, and trust owning agricultural land in the county as shown by the assessment rolls.

One shortcoming of Iowa's 1975 reporting law was that beneficial ownership interests (as opposed to legal ownership interests) would not necessarily be identified. The Iowa Legislature attempted to remedy this fault by legislation, effective July 1, 1979, which requires (1) mandatory recordation of every conveyance or lease (of 5 years or more) of agricultural land, and (2) disclosure of beneficial ownership of agricultural land by nonresident aliens.

In a sudden turnabout in the 1979 legislative session, Iowa passed a bill which repealed the old restrictions and substituted a ban on nonresident alien, foreign business, or foreign government acquisition of agricultural land in the State. However, the ban does not apply to agricultural land, up to 320 acres, acquired by (1) inheritance or (2) for an immediate or pending nonfarm use (the land must be converted to that use within 5 years). The 1979 law also repealed the general reporting requirement for nonresident alien ownership of agricultural land and replaced it with a registration of agricultural land acquisition.

The 1979 legislation did retain the requirements for reports by county assessors and the provisions designed to disclose beneficial ownership. However, the new legislation alters the definition of a nonresident alien. As a consequence, information generated under the present definition cannot be related to data obtained under the previous definition.

Regulation and Reporting Requirements Abroad

A survey of the restrictions and protections surrounding the ownership of real estate by foreigners in 40 countries and a detailed investigation of laws and regulations in 11 countries revealed that substantial procedural and substantive restrictions are imposed on foreigners attempting to invest in real estate in those countries. The line between a procedural and substantive restriction is sometimes blurred.

In some countries, such as Belgium, the Netherlands, and the United Kingdom, virtually no restrictions, requirements for approval, or reporting requirements apply to investments by foreigners in real estate. In France, although prior authorization may be required in some situations, the purchase of real estate through a notary enables a foreign investor to circumvent the requirement of prior authorization. In Germany, the authority of the federal government to require prior approval to be obtained by nonresidents wanting to acquire real property has not been exercised.

In Saudi Arabia, many types of real estate investment are allowed, provided that either royal or ministerial approval is obtained. No standards or guidelines appear to limit the discretion of the above-mentioned authorities.

In Switzerland, persons abroad wanting to acquire real estate in Switzerland must obtain a permit from the competent cantonal authorities. The law provides that a permit shall be refused unless the applicant can show a legitimate interest, which includes the use of real estate primarily for a trading, manufacturing, or other commercial establishment, and under some circumstances acquisition of real estate for personal use. Foreigners also are allowed to acquire real estate interests in areas relying on tourism.

In Brazil, a U.S. investor wanting to acquire agricultural land encounters both procedural and substantive restrictions. Similarly, in Canada, both procedural and substantive restrictions are encountered on the national level. The Canadian Foreign Investment Review Act and especially its application to real property serves as a model of foreign investment legislation. On the province level in Canada, restrictions are imposed through taxing and limiting the amount of land which can be acquired.

In Mexico, although the restrictions on foreign investment in Mexican real estate (1) have a long history, (2) are enshrouded in the Constitution, and (3) are abundant, a U.S. citizen can nevertheless become a beneficial owner of real estate, and can derive a substantial profit therefrom.

The requirement in the Mexican Investment Law of 1973 that foreigners hold only nominative shares and a similar requirement in the Brazilian Law 5709 of 1971 may provide examples of a mechanism to solve the second- and third-tier layering used to veil beneficial ownership.

Studies on the legislation and interaction of regulations in countries such as Germany, Switzerland, and Canada can provide insight into potential interaction between Federal and State government regulation of foreign ownership.

Land Record Systems in the United States

Two rudimentary land record systems (cadastres) exist in the United States: those of recorders of deeds and those of assessors. These records--plus maps, identifiers, and a description of physical features--form the ingredients of a network multipurpose land data system (MPLDS). For the disparate files of thousands of local jurisdictions to become a national system would require nationwide organization, cooperation, and standardization.

A land record system is broadly defined as an ordered and comprehensive assemblage of facts, principles, and methods designed to do some combination of the following: gather, describe, code, edit, enter, organize, maintain, secure, retrieve, present, and analyze information and data pertaining to the ownership of, physical characteristics of, and events/activities occurring on all land parcels in a given area, over time, and at any point in time.

Nowhere in the United States does a prototype of an MPLDS exist. The deed records and assessors' records are the elements on which such a system would be based. Although the basic characteristics of both types of systems are determined by State statute, numerous legal and extra-legal variations exist. Moreover, the status of the various land title recording

and assessment systems is changing over time as statutes, administrative practices, and, particularly, information-processing technologies change. Thus, U.S. land record systems are characterized by extreme diversity, and it is inappropriate to regard them as constituting a monolithic "U.S. land record system."

The question remains: Can a national MPLDS be feasibly forged from the links of the various State and local land records systems? The answer to this question lies, in part, in the standardization in and the intrastate and interstate compatibility of existing land record systems.

Land title recording systems and assessment record systems at present function almost independently. Since assessment record systems more nearly approximate the model MPLDS system, they were chosen to discuss standardization of parcel identification systems, property ownership mapping, and standardization of codes for property use. In addition to the more comprehensive land title recording and assessment record systems, numerous other land record systems exist or are being developed. Notwithstanding the requirements of monitoring foreign investment in real estate, comparatively few of these systems are truly multipurpose systems. However, the more interesting or engaging of these systems have the capacity of becoming multipurpose and nationwide.

Land Data Systems Abroad

Land data systems abroad provide some useful insights into procedures and mechanisms, but no models exist for replication in the United States. The form and growth of land data inventories reflect a national structure and style of governmental administration. The more elaborate land data systems that have evolved in Europe and Taiwan result from a tradition of administrative initiative and a highly professionalized civil service. Their multipurpose land data systems evolved from improved assessment procedures, extended to land use planning.

The foreign cadastres reviewed represent a wide spectrum of approaches to land data systems, ranging from an inclusive system on Taiwan (emphasizing strict land use control), to a comprehensive national cadastre being evolved by Sweden, to a sophisticated but more limited one used in the Federal Republic of Germany, to the French system that is primarily a legal cadastre. The Maritime Provinces of Canada represent an attempt at an integrated land data inventory reform that currently includes both traditional elements and efforts to install a European-type cadastre. Sweden and the Federal Republic of Germany (and to a lesser degree, Maritime Canada) are relying increasingly on interfaced electronic data processing; they are carrying out long-range expansions of their cadastres.

Applicability of such systems to the situation in the United States must consider such factors as size, diversity of conditions, customary practices, and the unique American governmental organization--all of which suggest that a wholesale adoption of the European-style cadastre does not appear feasible. The European cadastre appears to be, in essence, an organic system and its maintenance requires the acceptance of wide-based administrative and governmental premises. Moreover, in practice, its

substantial value, aside from some noteworthy improvements in information retrieval, appears to be the facilitation of national land use planning, which is clearly contentious in U.S. public policy.

These conclusions are reinforced by the Canadian experience, a national state and culture whose social patterns and governmental institutions are in some instances somewhat similar to those of the United States. Maritime Canada appears to be midway between the uniformity, range, and even aesthetic coherence of the European cadastre and its customary approaches to land information processing. Inevitably, perhaps, arguments concerning the desirability of cadastre projects tend to become reduced to questions ostensibly political in character, often featuring the respective claims to authority and function made by various governmental entities. The apparent lack of immediate applicability to the United States of practices elsewhere does not suggest a lack of need for sensible reform.

Available Data on Foreign Landownership

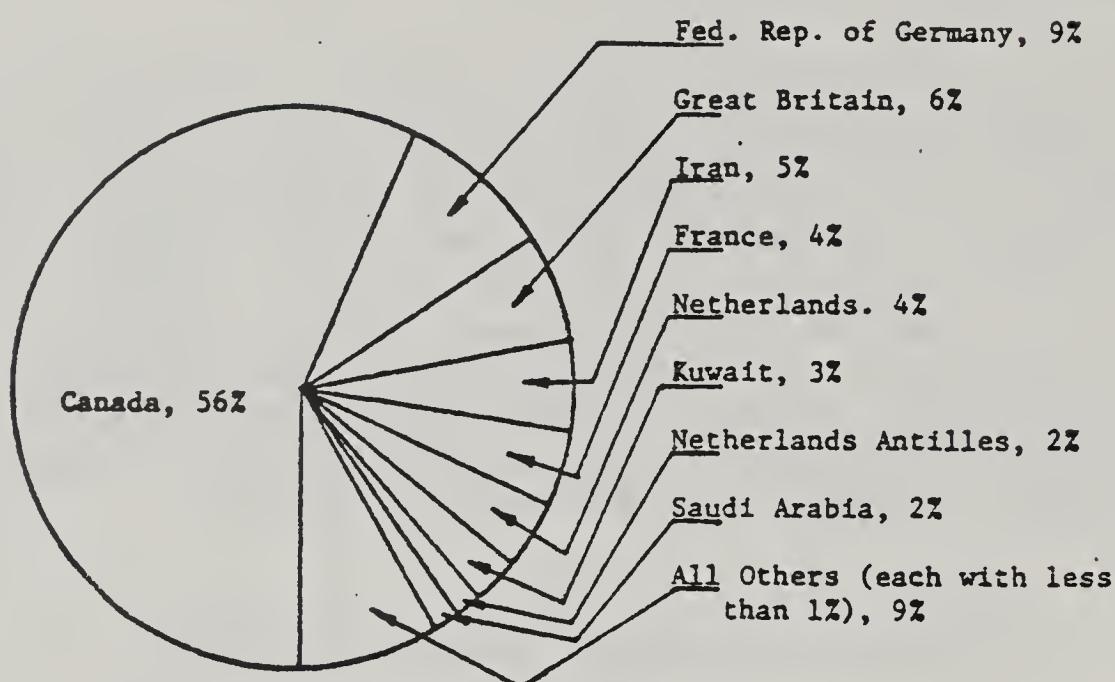
The purpose of this study was to determine the feasibility of alternative monitoring systems, not providing quantitative enumerations or estimates. However, the limited information on the transfer of real estate to foreigners available through the media for a 30-month period was summarized and compared to partial reports by some Federal agencies.

Findings from the review of available information include:

- o About 90 percent of the acreage was purchased by individuals or corporations of Western Europe, Japan, Canada, or other U.S. "allied" nations.
- o Foreigners favor urban real estate over rural real estate by about 10 to 1 in capital invested.
- o Fifty-six percent of the foreign capital being invested comes from Canada.
- o A small proportion of foreign investment is being made by Arab investors, primarily in urban real estate.
- o The focus of investment has been in the sunbelt and far western States.
- o Foreign purchasers buy tracts of real estate from three to five times larger than the average U.S. purchaser, but do not pay higher per-acre prices.

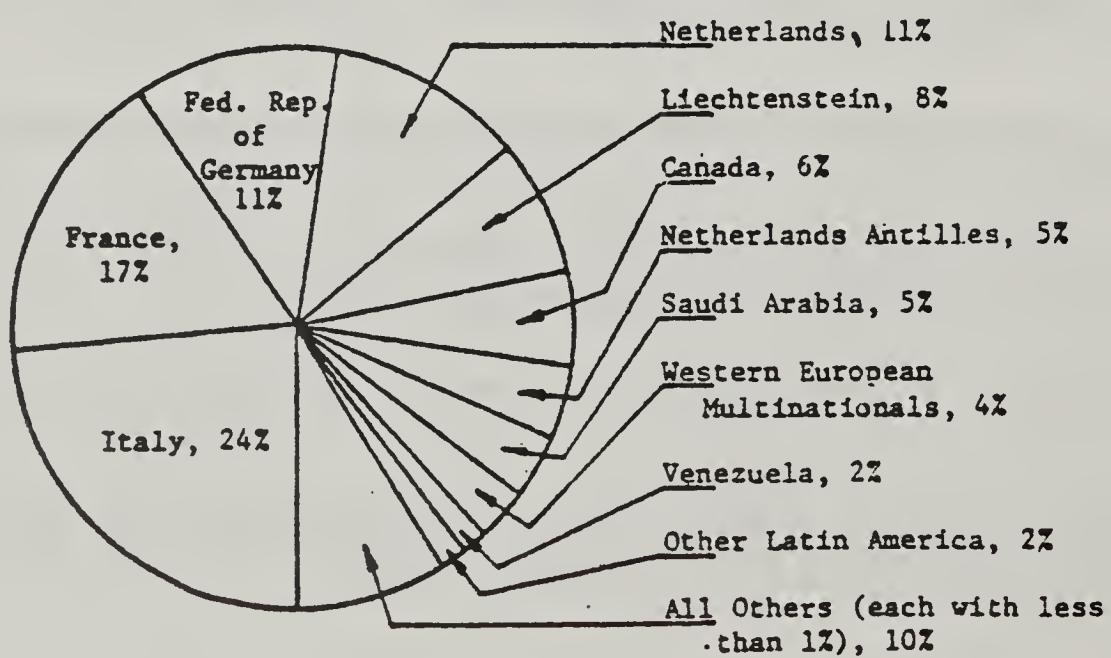
The shares of foreign investment, sources, and recipients, are graphically displayed in the following pie graphs. This proportional breakdown is only of real estate purchased during January 1, 1977, through June 30, 1979.

Figure 1--Percentage of value of foreign acquisitions of U.S. real estate, by country of purchaser for the period January 1, 1977 to June 30, 1979



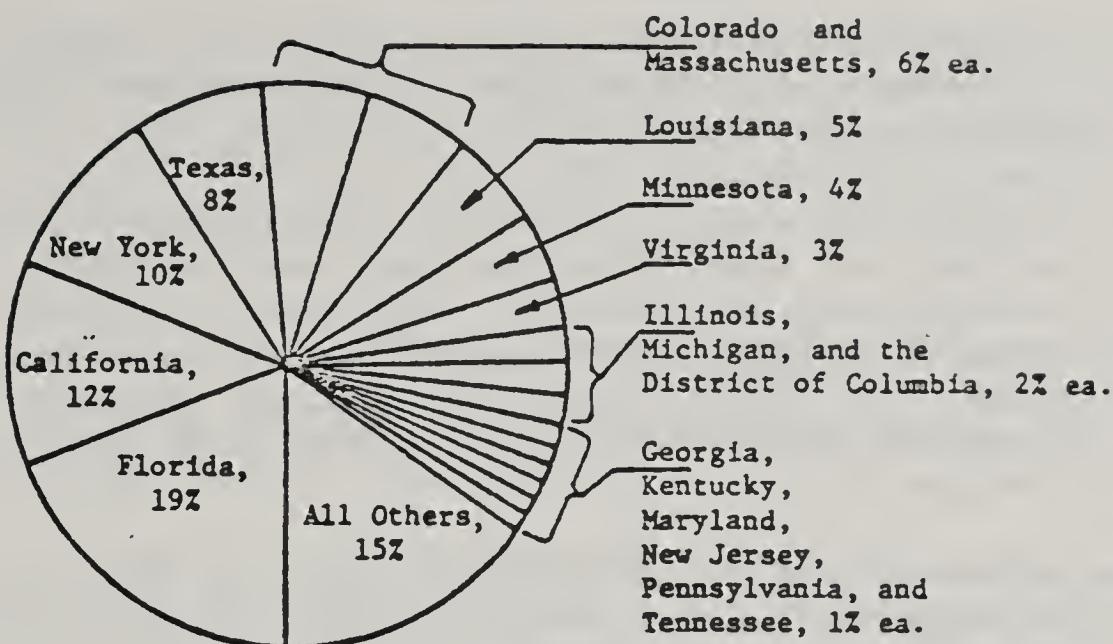
Source: Unpublished data, 1979, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, derived from review of newspapers, journals, news magazines, and other published media. Percentages based on reports in which a value was reported. Generally, values are total value of property and not equity.

Figure 2--Percentage of acreage of foreign acquisitions of real estate transactions by country of purchaser for the period January 1, 1977 to June 30, 1979



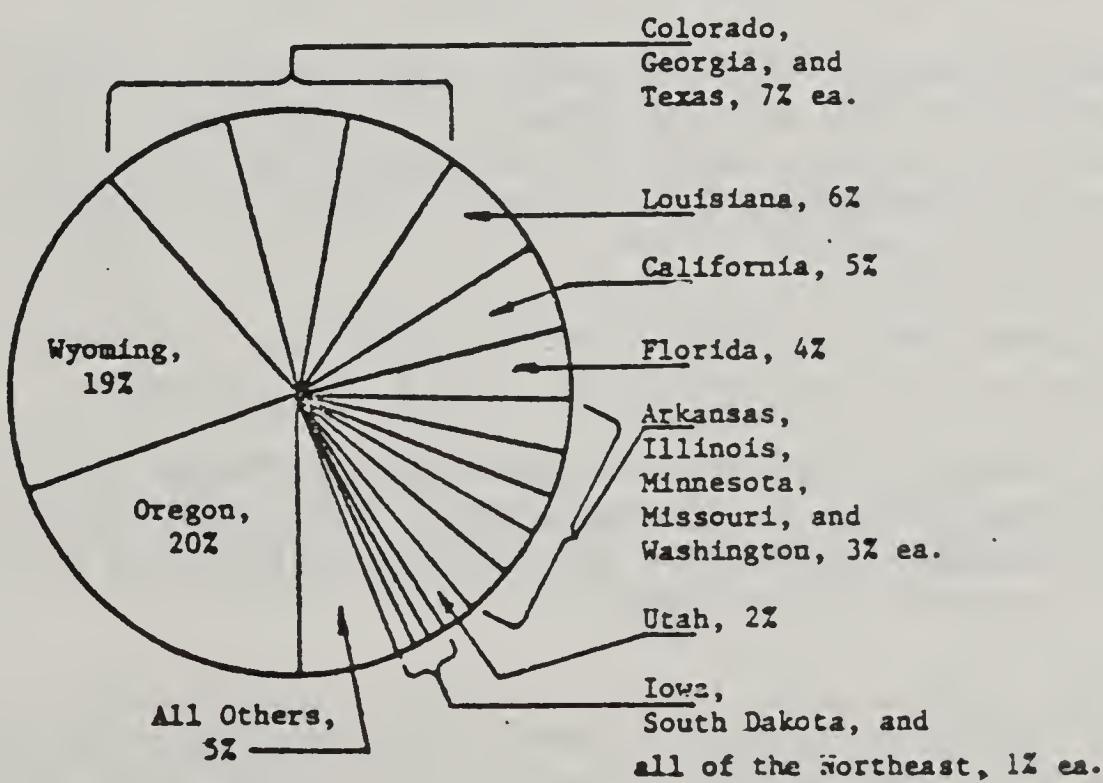
Source: Unpublished data, 1979, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, derived from review of newspapers, journals, news magazines, and other published media. Percentage of acreage based on reports in which an acreage of area was reported.

Figure 3--Percentage of value of foreign acquisitions of U.S. real estate,
by State for the period
January 1, 1977 to June 30, 1979



Source: Unpublished data, 1979, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, derived from review of newspapers, journals, news magazines, and other published media. Percentages based on reports in which a value was reported. Generally, values are total value of property and not equity.

Figure 4--Percentage of acreage of foreign acquisitions of real estate,
by State for the period
January 1, 1977 to June 30, 1979



Source: Unpublished data, 1979, Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture, derived from review of newspapers, journals, news magazines, and other published media. Percentage of acreage based on reports in which an acreage of area was reported.

ANALYSIS

The Four Methods

To systematically analyze the feasibility of monitoring foreign direct investment in U.S. real estate, three sets of factors were combined to yield eight possible systems for analysis.

Initially, the feasibility study, reflecting the language of the legislation, was divided into two distinct approaches based on types of land information systems--direct and indirect. The direct approach examines those systems designed exclusively for monitoring foreign direct investment in U.S. real estate. The indirect approach examines those systems designed to provide various sets of information of which foreign direct investment information is but one set.

The next step was to ask what kind of information should be collected. A classification suggested by Edgar Dunn,^{4/} identifies two types of information systems, intelligence and statistical. The former provides separately identifiable information for each unit in a given population, while the latter provides information only about the population or subdivision of the population. The distinction between these two types of information is of primary importance for this study, because the type of information sought will dictate the resource requirements and influence the design of the monitoring system.

The final step was to consider what role the Federal agency or agencies would have in gathering the information. Should it be a passive or active role? That is, should the Federal agency rely on others (foreign investors, real estate brokers, financial institutions, other Federal agencies, State or local agencies, or whoever) to provide the information or should the agency actively seek out the information?

From these three sets of alternatives, eight possible systems were stated and then reduced to four methods selected to represent a wide range of alternatives. In the full report these methods are described as scenarios in the analysis of chapters 5, 6, 7, 10, 11, and 12. Briefly the four methods (scenarios) are:

1. A centralized Federal registration system with the burden of registering placed on the foreign entity or his representative.
2. A Federal system utilizing available sources (e.g., Bureau of Economic Analysis, Securities and Exchange Commission, Federal Trade Commission, Internal Revenue Service) to which foreign investors may already be or would be capable of reporting.
3. A national multipurpose land data system including data on foreign direct investment, oriented toward local government records, principally tax assessment but including title records, land use records, and county offices of Federal agencies.

^{4/} E. Dunn. Social Information Processing and Statistical Systems: Change and Reform. J. Wiley & Sons, New York (1974).

4. Periodic statistical surveys to provide national benchmark data such as those of the Bureau of Census, and the U.S. Department of Agriculture rural landownership survey.

Feasibility means more than possible. In an abstract sense, virtually anything can be engineered if enough resources are devoted to the project. Consequently, money (economic) and manpower (administrative) criteria were added to technical feasibility. Legal and political feasibility also was considered.

Methods 1 and 2 Compared

Methods 1 and 2 are systems designed exclusively for monitoring foreign direct investment in U.S. real estate.

A comparative analysis of the technical, economic, administrative, and legal feasibility of method 1, a direct registration system,^{5/} and method 2, utilization of existing Federal data-gathering activities, reveals that either scenario is feasible.

Initially, selection of either method to monitor foreign investment in U.S. real estate should be based on the objectives of the Federal Government regarding the potential use of and the need for particular types of information; that is, for intelligence versus statistical information and purposes.

Technical Feasibility

Other than the structural differences, the difference between the methods is the type and amount of the information gathered. Under method 1, comprehensive data on each individual land parcel and owner, and ongoing transactions would be collected. Data on the real estate holdings of individual foreign investors (for other than agricultural land) are not now available to any significant extent. Method 2 would provide only statistical estimates of the principal features of foreign-held real estate, including geographic detail for such areas as States, cities, and regions. Both methods would be able to capture most of the important information on foreign investment in U.S. real estate in terms of total worth.

There are several important limitations on the ability of any monitoring system to collect complete information on foreign investment in real estate. Foremost among these limitations are: (1) difficulties in determining the current value of existing real estate holdings; (2) problems in assembling data on partial property interests--such as leases, mineral and

^{5/} The term "registration," as used in this report, means "reporting" of certain information. Reporting, e.g., foreign ownership, is not a condition to obtaining some governmentally granted privilege as, for example, requiring aliens residing in the United States to report their status annually or requiring that automobiles and their ownership be reported annually.

other property rights, easements, partial title ownership, etc.; and (3) in some instances, difficulty in identifying beneficial ownership, control, or interest.

Economic Feasibility

The economic costs of implementing method 1 are much greater to both the Federal Government and foreign investors than utilization of existing reports. A comprehensive direct registration system which balanced technical data collection objectives and economic reasonableness would cost approximately \$4 million to \$8 million annually. An additional \$1.5 million would be incurred for comprehensive reporting of existing holdings. For method 2, in addition to a share of agency overhead costs, the costs for a special unit to analyze the existing data, conduct special surveys, and reimburse certain data collecting agencies would be less than \$1 million annually.

Administrative Feasibility

Either system would be most effectively administered if a single Federal Government organization were given the mandate and resources to monitor foreign investment in U.S. real estate.

Legal Feasibility

Neither method could be fully implemented within existing Federal regulatory and legislative authorities. Implementation of method 1 would require specific legislative authorization. Method 2 would require additional rulemaking procedures and interagency agreements if the requisite information on foreign investment is to be obtained.

In addition to the legislative and administrative-rulemaking changes, some additional legal issues relating to the implementation of methods 1 and 2 are:

- o Congress apparently possesses the requisite constitutional authority--individually or under a blending of the welfare, commerce, naturalization, national defense, or necessary and proper clauses--to mandate either method.
- o The constitutional requirements of equal protection and due process would not appear to prevent discriminating against nonresident aliens by requiring just them to report their holdings of U.S. real estate.
- o The treaties of Friendship, Commerce, and Navigation and the multilateral agreements of the Organization for Economic Cooperation and Development to which the United States is a signatory party would not appear to interfere with enforcement of Federal legislation requiring foreigners to report their U.S. real estate holdings, so long as the system is used solely for information-gathering purposes and is not used as a means for limiting such investment.

- o Any penalty imposed on the foreign investor for failure to comply or for providing false or misleading information should be high enough so that its expected value will exceed the highest possible compliance cost that the foreign investor might face.
- o The Bureau of Economic Analysis, U.S. Department of Commerce, in administering programs which require the reporting of foreign direct investment in the United States, has found that the vast majority of foreign investors are earnestly concerned with complying with the reporting requirements.

Methods 3 and 4 Compared

Technical, Economic, and Administrative Feasibility

Introduction.--Multipurpose land data systems (MPLDS) are any land data systems that serve more than one purpose. For purposes of this report, MPLDS are defined in method 3 as a network of regularly updated county records and in method 4 as a periodic statistical survey. These methods are comprehensive land information systems which include foreign ownership as one subset of data.

The MPLDS defined in method 3 follows a generally accepted pattern consisting of three interconnected cadastres--fiscal, juridical, and environmental--and a geographic locator and parcel identifier. The fiscal cadastre is a subsystem serving essentially the valuation, assessment, taxation, and revenue collection purposes. The juridical cadastre records, and may guarantee, descriptions of property and the nature of rights. The environmental cadastre contains all physical characteristics. The geographic locator and parcel identifier uniquely references the property. The multipurpose system as defined in method 3 is a network of county or other local government records.

The meaning of multipurpose was extended in method 4 to include general statistical surveys which provide many types of information. Several national censuses, for example, agriculture, government, and business, are of this type. However, statistical surveys also can be conducted to provide more or less than national coverage. It is assumed in method 4 that only statistical information is to be obtained and no publicity of individual names of owners would be permitted.

Names, addresses, and other parcel-specific data also may intrude into areas subject to nondisclosure. Data management, including intergovernmental coordination, may be more difficult for method 3 than for method 4.

Technical feasibility.--While methods 3 and 4 are multipurpose, they do not necessarily serve the same purposes. For instance, method 3 can be expected to serve most land data needs of local and State governments. Survey systems will not satisfy the needs of assessors, recorders, and conveyancers that the network MPLDS, method 3 system, will. Some planning

purposes can be fulfilled with survey MPLDS, method 4, data. Land regulations probably cannot be serviced by survey data. Most national policy decisions can be met with survey data, particularly sample survey data, if intelligence data for each individual parcel are not required as a system output.

The MPLDS approaches will not necessarily reveal foreign landownership more completely than single-purpose systems. However, the MPLDS, particularly method 3, will provide for a more thorough evaluation and analysis of these data (e.g., comparison with domestic classes of owners, analysis by type of land use, location variables, etc.).

The network system provides a more flexible data base in terms of analytical capabilities. For instance, when the question of foreign landownership was raised in Prince Edward Island, Canada, citizenship was not part of the data base. Therefore, the taxpayer address was used as a surrogate for citizenship. While the results were less precise, the information system was capable of a satisfactory response in a timely manner to an important concern of policymakers.

If data are needed on specific tracts, method 3 is preferable for accurately monitoring the status of foreign landownership over a period of time. To maintain a running inventory of foreign landownership (or any similar group of owners), data on ownership transfers must be related to a specific parcel. This capability will make it possible, for instance, to reveal whether two transfers, at different times, involve the same or different parcels.

Method 4 could be implemented in a relatively short time. Method 3 would take much longer to implement nationwide, due to the need to make changes in nearly all of the 3,000-plus counties in the United States. However, method 3 would not require survey design, questionnaire development, field testing and operation to the degree usually involved in method 4 surveys.

Method 3 can provide data about specific ownership parcels. These parcel data also can be displayed graphically on a hardcopy map or on a computer terminal screen. Since the survey MPLDS, method 4, is a statistical system, it is not designed to provide data on specific parcels or sets of parcels. However, method 4 can provide data on and answer questions about individual States and combinations thereof.

Economic feasibility.--Cost estimates for the various components necessary to implement method 3 with level B capabilities were computed.^{6/} At the national level, the average per parcel cost estimate is about \$40. There is a wide variation in such costs in the different parts of the country. These differences are due to such variations as (1) rural versus urban parcels, (2) topography of the area, and (3) region of the country. Therefore, implementation costs in a given county might average less than \$10 or over \$50 per parcel.

^{6/} The level B system is the minimum deemed necessary to provide data about local ownership patterns.

The above cost estimates are gross costs for implementation. To include the current status of land record systems in the estimates, a net cost was calculated for each State. The net cost estimates in effect credited each State with the components for method 3, level B, that were already in place or up to standard.

In the economic evaluations, existing systems and components of systems were used wherever possible to provide relevant data. For instance, as to method 3, experience in mapping and monumentation costs were used to develop estimates for all regions and the Nation (e.g., geodetic control and base mapping costs are estimated to total about \$160 million). Similar data were used for computerization of assessor record systems. Also, total system costs in jurisdictions that have made substantial progress in developing improved land record systems were examined--such as Forsyth County, North Carolina, and the Canadian Maritime Provinces.

Similar data sources were used for method 4, such as costs of surveys for similar subject-matter areas, comparable respondent classes, and sample sizes.

Method 3 is clearly the more expensive MPLDS. Estimates of gross costs to bring all local jurisdictions up to the level B standard totaled \$3.4 billion. After allowing credits for work already completed, the net cost is estimated at \$1.2 billion.

Method 4 has a considerably lower cost, mostly related to the size of sample needed for the survey. Cost estimates for this approach considered likely ranges of incidence (e.g., of foreign landownership) and variance, and also assumed that reliability to at least provide State estimates would be necessary. Costs for method 4, which are high because of the low incidence and high variance of foreign ownership, most likely would range from \$60 million to \$120 million for a one-time survey.

Cost comparisons are not strictly comparable, since method 3 costs include development of a local information system in each county and method 4 costs are for carrying out a one-time survey. Because it would be necessary to periodically repeat the survey, the cost advantage of method 4 may be overstated.

Method 3 would be extremely costly if considered in terms of cost per foreign landowner, cost per acre owned by a foreigner, or percent of all real estate owned by foreigners. The network MPLDS for information on foreign ownership makes economic sense only as an additional feature of a comprehensive system.

Costs of not adopting an MPLDS are difficult to document. However, these costs can safely be assumed to be significant, due to inefficiencies in data handling and duplication of effort that exist in the current system. For example, the current annual cost of \$17 per capita for maintenance of land data records in Wisconsin is a case in point.

Surveying, monumenting, mapping and computerizing of method 3 could take place incrementally, which would help reduce the cost impact in any one budget period. The survey MPLDS, if it were similar to one of the Federal

censuses, would generate costs in the budget period in which the data were collected. These data collection costs would recur each time the survey was repeated. There would be costs for maintenance of the network MPLDS data systems. However, these costs likely would not exceed amounts needed to query the system. Therefore, while system development costs for method 3 are several times larger than for method 4, operating costs, once the systems are in place, probably are comparable to one another.

Administrative feasibility.--Data management, including intergovernmental coordination, may be more difficult for method 3 than method 4. For example, method 3 depends in large part on the reformation of local government land record systems. This will require the coordination of public records that are now widely scattered and/or not relatable.

From an administrative point of view, the assessor's office would be a logical starting point for the implementation of method 3. This is due to several factors--including the status of the assessment data base, understanding by assessor personnel of modern record systems, and the propensity of assessors to adopt new methods and systems.

Legal Feasibility

The mere technical or economic possibility of obtaining information on landownership is no assurance that government or private persons have the right to it. Names, addresses, and other parcel-specific data also may intrude into areas subject to nondisclosure. The legal analysis of the two types of multipurpose land data systems indicated that the proposed disclosures required of individuals, partnerships, corporations, and trusts may provoke challenges, but case law does not reveal any conflict with constitutional rights to (1) privacy, (2) due process of law, (3) freedom against unreasonable search and seizure, and (4) freedom against compelled self-incrimination.

While statutory rights to privacy and freedom of information created by Federal and State law do not create insurmountable obstacles to the implementation of an MPLDS, the modification of these statutes to more practically accommodate an MPLDS would be advisable, particularly if the MPLDS system is person-specific as well as parcel-specific.

The census, commerce, welfare, and necessary and proper clauses of the Constitution each provide a constitutional basis for the creation and implementation of the Federal multipurpose survey. Courts have provided the Federal Government broad powers under the census, welfare, and the necessary and proper clauses.

The recent U.S. Supreme Court decision in National League of Cities v. Usery puts new and uncertain light upon the ability of the Federal Government to require States to participate in an MPLDS, although Federal incentives would be a constitutionally viable way to create and maintain a system.

Existing State laws generate a wide variety of land use information, although not always in a parcel-specific manner. With the exception of

laws in States such as Iowa and Oregon, which require disclosures concerning corporate investment and activity in agriculture, and with the exception of those States which require owners to list their own property for the purpose of real property taxation, existing State laws do not tend to require the extensive ownership disclosures contemplated in method 3.

Existing State constitutions appear not to preclude the adoption of methods 3 or 4. The seven State constitutions which were analyzed for this study do not define the duties of State or local officers so that county recorders or assessors would not be prevented from operating an MPLDS.

Political Feasibility

Technical, economic, administrative, or legal feasibility is no assurance that a particular method will receive political support, legislative authority, or bureaucratic acceptance. Thus, the feasibility study included factors in political success or failure of the four types of information systems. Political feasibility refers to the probability that a method will receive the necessary legislative and executive approval with adequate authority, resources, and institutional and social support to achieve its goals.

In a free society, it is assumed that decisions about the use of governmental authority will be improved by the availability of information to the public and officials about the phenomenon under debate. However, attempts to increase the amount of information that is a matter of public record about particular groups or activities can generate powerful opposition. Consequently, an evaluation of the feasibility of the method must take a number of factors into account. These include (1) ideological issues raised by the proposal; (2) composition of groups likely to favor or oppose the plan; (3) economic costs of establishing and maintaining the system; (4) the way the administrative organization necessary to implement the proposal fits with existing governmental agencies responsible for dealing with landownership information, as well as with the overall structure of the Federal system; and (5) the extent to which the information acquired will meet the needs of the public and public officials.

An analysis of the four methods in terms of these factors indicates that: (1) public officials have shown little curiosity about general landownership patterns in the Nation; (2) concern over foreign control of agricultural land is a recurring issue in America, dating back to the 19th century; (3) the strong symbolism and popular feelings associated with the protection of agricultural land do not extend to urban land, and the opposition of groups to foreign ownership of cropland is not directly transferable to urban land; (4) ideological issues concerning the right to privacy and Federal-State relations are raised by the scenarios; and (5) there is no general support for proposals for a national information system that would include both urban and rural land and, particularly, one that would require the identification of domestic as well as foreign landowners.

The findings also show that there are trade-offs between the political and institutional feasibility of the methods and the amount and quality of data that would be provided. One trade-off relates to cost. Another concerns

the extent to which data that are now private, or of limited public access, are made public or accessible. A third involves the complexity of the institutional requirements and the extent to which they differ from existing arrangements. As each of these increases, the value of the data for public purposes goes up, but the political feasibility goes down.

Thus, method 2, calling for improving existing Federal data on foreign landownership, which would provide the least information, is the one most viable politically and institutionally. Yet, even it has no well-identified interest group support or backing. The analysis further suggests that the creation of a land record system with a higher yield of information is not feasible at this time. Rather, such a system with some of the attributes of an MPLDS more likely will evolve out of a series of experiments and incremental steps at the local, State, and national levels of government. It would be supported by both Federal policy and funding and have professional group support for diffusion of advances in land record research and technology.

QUESTIONS

Some of the questions that arise from an examination of means to obtain data on foreign ownership of real estate shape matters of feasibility. One cannot conclude, because one or another of the data systems can be developed, that it should be. Decisions about information systems include the purposes for and consequences of obtaining, holding, or distributing a fact or facts.

The matters addressed in this section are not limited to facts about foreign ownership of real estate. Questions of economic impact, secrecy, and disclosure, and the scale and interaction of systems, apply to many if not all information systems. While it is not possible to settle these issues within this report, at least they will be touched. They form the setting for consideration of the four methods examined in this study.

Economic Analyses and Data

Of the some \$41 billion foreign direct investment position (foreign equity plus net debt to foreign parent) reported for 1978, real estate investments are a small fraction. Statistics for a broad definition of real estate are unavailable but if one adds timberland, farmland, and mineral land to the official grouping consisting mainly of operators, lessors, and developers of real estate, the total foreign direct investment position in U.S. real estate probably was between 3 and 10 percent of the \$41 billion of total foreign investments reported for 1978. This may be compared with a total U.S. capital market for assets held for investment of about \$3.5 trillion in 1978. By all indications, foreign-owned U.S. farmland is less than 1 percent of the U.S. total.

While foreign direct investment in U.S. real estate is small at the present time, there is nonetheless an interest in the economic appraisal of the potential consequences and an assessment of the adequacy of the data base. Such data would help to address public concern over the real or perceived

rapid increase in foreign investment in U.S. real estate in recent years and concern over the potential consequences if this type of investment were to grow considerably larger. Moreover, while foreign real estate investment is likely to have only a very small effect on the national economy, at the present time, the economic effects could be significant in the localities where the investments are made.

Effect of Foreign Farmland Purchases

The main areas of concern investigated included price of farmland, size of farms, availability of capital, conservation and improvement of farms, intensity of farming operations, and land tenure. Both the on-farm effects and the effects on rural communities were examined. A number of the conclusions below are based on limited empirical evidence. They need to be reviewed in the light of future research and improved statistics.

Domestic forces, principally the desire to enlarge farm size and inflation, are the major factors pushing up farmland prices. Foreign investment in farmland adds to this upward push insofar as it is an effort to buy land. But nationally, foreign investment is not significant. It could be significant in some localities--and could become significant nationally if foreign investment in farmland were to increase greatly.

Similarly, current levels of foreign investment in farmland are too small to have a significant impact on farm size, but could have some upward effect if foreign investment were to increase substantially. The evidence suggests that foreign investors tend to purchase large farms but do not necessarily consolidate a number of smaller farms into larger units. Foreign ownership tends to increase the proportion of farms operated by tenants and hired managers, but again this effect is small when compared with domestic forces making for separation of landowner from farm operator.

The available evidence indicates that foreign investors may be less limited in capital than many domestic owners, and may operate at a generally high level of conservation and farm improvement. The extent to which foreign investors may reap benefits from future increases in farm program benefits and publicly funded resource programs such as flood control and irrigation projects, however, is not known. The evidence also suggests that intensity of land use is being maintained and may even be increased by foreign owners. There is a possibility that intensity of livestock operations may be decreased in some cases. But the available evidence does not isolate the effect on livestock production due solely to foreign ownership, as contrasted to general trends in production.

The local farm community will benefit to the extent that proceeds from farm purchases and other investments by foreign owners are reinvested in the local community. There is very little evidence on the extent to which this actually happens. There is virtually no evidence on whether foreign investors market their products and purchase production inputs locally. The pattern probably is not greatly affected by foreign ownership since most foreign-owned farms are operated by local farmers. Likewise, little is known about the extent to which foreign owners spend farm income they earn locally. The comparative high liquidity of many foreign farm investors and

their frequent desire to find a safe haven for their capital would make for some plowing back of farm income. To the extent that foreign investment contributes to higher land prices, the local tax base is increased while public expenditures are unlikely to be greatly affected.

A more detailed analysis of foreign-owned U.S. agricultural land may be found in USDA's first report under the Agricultural Foreign Investment Disclosure Act.

General Economic Consequences

The discussion of general economic consequences includes effects on prices, level and distribution of income, employment, interest rates, and reserves of foreign exchange, both in their immediate and long-term effects. These effects are interrelated. They are complex and depend on the location and type of foreign real estate investment, the state of the economy, and the response of U.S. policymakers. Some of the more important cause-effect relationships are illustrated in this summary.

The immediate effect of foreign real estate investment is an upward push in real estate prices. The long-term effect on prices depends on whether the investment increases the supply of real estate beyond that which the domestic market does. The supply would be increased if either the foreign investor undertakes construction of new office buildings, shopping centers, etc., or the proceeds of the sale are used to develop more real estate. If new real estate is developed, the price effects will depend on the availability of land, labor, and construction supplies required for the particular type of real estate developed. Foreign real estate investment is concentrated in growth areas and in major metropolitan centers, such as New York City, where the supply of land or labor often is limited. In such areas, the net effect of foreign investment is likely to be an increase in real estate prices.

The income and employment effects of foreign real estate investment depend on whether such transactions result in increases in savings, imports, domestic consumption, or domestic investment. If the proceeds from the sale of developed real state go into savings or are used to import goods from abroad, there will be little or no effect on income and employment. If the proceeds are spent on domestic consumption, there will be a short-term stimulus--but long-term effects will be limited. If the proceeds are used to create new capital goods or if the foreign investor himself develops new real estate, income and employment will be permanently increased, provided the new investment does not displace other domestic investment. The closer the economy is to full employment, the more likely it is that new investment stemming from foreign investment will bid away labor and other resources from competing uses, resulting mainly in general price increases rather than real income gains.

The impact of foreign real estate investment on the distribution of income depends on how widely wealth is held in this country. Owners of real estate will gain and in the long run owners of other forms of wealth also may benefit. The effect of foreign real estate investment on employment

almost certainly is positive, if it has any effect at all, and may benefit workers who would otherwise be unemployed.

The shortrun effect of foreign-owned real estate on the U.S. balance of payments clearly is positive. The long-term effect depends on the extent to which profits are repatriated and investments liquidated. So-called flight capital seeking a safe haven is much less likely to produce earnings that are repatriated and to return the principal to a foreign country than investment which enters the United States primarily in response to economic conditions such as favorable returns.

The Data Base

To ideally assess the effects of foreign investment in real estate on total domestic investment, income, employment, and the balance of payments, several types of data are needed on a regular basis. The data would include magnitude and type of foreign real estate investment, amount of foreign funds involved, extent to which foreign investors purchase existing properties or develop new ones, degree to which profits are repatriated, geographic location, employment, and taxes paid.

In the past, research on economic impacts of foreign investment in U.S. real estate was hindered by inadequate data. However, as required by the International Investment Survey Act of 1976 and the Agricultural Foreign Investment Disclosure Act of 1978, considerably more information is collected at the present time. The data may, with a few exceptions, be sufficient to answer the main policy questions.

One exception relates to limitations on information on area and value of foreign real estate by specific uses. This information will be available from the Commerce Department's 5-year benchmark survey, but not the annual surveys. Data also are limited by exclusions of investments below a specified size and of properties purchased for private purposes such as homes. For foreign-owned farmland, data on quality of land and farm operations would be required to meaningfully compare prices paid for land by foreign investors and U.S. farmers and to assess economic impacts.

The complexity of reporting forms, the burden on respondents, and the reliability of the data must in each case be weighed against the gains from expanding the data base. In some cases, the need for information may warrant expansion of the national data base. In others, special indepth surveys of regions impacted by foreign investment may be more appropriate.

Federal Taxes and Foreign-Held Real Estate

The review of U.S. taxation of foreign-held real estate contains some tax advantages for foreigners under specific circumstances. However, the U.S. tax laws which favor investment in real estate are more important than the special advantages to foreign investors.

A review of U.S. tax laws and tax treaties affecting U.S. real estate investment by foreign nationals leads to the following conclusions:

- o U.S. tax laws traditionally have been and still are favorable to U.S. investors in U.S. real estate. There is the allowance of deductions for expenses related to owning real estate for personal or commercial use and taxation of appreciation at lower capital gains rates.
- o The U.S. lessor of real estate on a commercial basis normally arranges operations in such a way that little or no U.S. tax is paid on rental income, and gains are realized in the form of lower taxed capital gains. Each successive buyer obtains a new tax basis for future deductions.
- o There are a number of ways in which the U.S. owner of real estate held for personal use can defer or escape the U.S. capital gains tax altogether, reflecting the traditional U.S. policy of encouraging home ownership. The tax is deferred by "rolling over" personal residences (reinvesting the proceeds from the sale of one private residence in another within a specified period) and is avoided by sale after a certain age or transfer at death (until 1980).
- o The favorable U.S. tax laws affecting real estate provide the U.S. owner with both a hedge against inflation and a "tax shelter" for other income by permitting the deduction of real estate expenses against other income.
- o Taxation of farmland, timberland, citrus groves, and cattle feeding operations traditionally has been extremely favorable--e.g., permitting acceleration of deductions, deferment of taxable income, and taxation at capital gains rates. These benefits are available to full-time farmers and "absentee" farmers. Favorable taxation of these agricultural activities has encouraged "absentee" U.S. investors to make investments of this kind as a "tax shelter" for other income.
- o The foreign investor is subject to the same U.S. tax provisions as American citizens, if the investor conducts an active real estate business in the U.S., either directly or through a U.S. corporation.
- o If the foreign investor's U.S. investments are passive in nature (not effectively connected with a trade or business in the United States), the U.S. tax is a maximum of 30 percent on gross rental income without deduction of any expenses, but capital gains from the sale of the property are not taxed.
- o For the passive investor, the 30-percent tax on gross rents can be reduced to regular U.S. tax rates on net income, as if the investor had an active U.S. business. A condition for this treatment is that capital gains are taxable in the year of sale.
- o A number of older U.S. tax treaties affect the foreign investor owning U.S. real estate through a foreign corporation. In this event, if the investment is passive in nature, the investor can elect to be taxed on net income at U.S. corporate tax rates and eventually realize gains free of U.S. tax. To take advantage of

such treaties, the investor must either be a resident of the treaty country or own the U.S. real property through a third-country corporation, with attendant complexities and costs.

- o The ownership of U.S. real estate through a corporation permits the foreign owner to dispose of the property without the imposition of U.S. tax on the capital gain. To escape the capital gains tax, the owner must use complex techniques, such as the sale of the stock in the property-owning corporation or its liquidation.
- o Other techniques include the sale of property followed by liquidation of the corporation, a sale of property for installment notes, and the exchange of property for like-kind property. These techniques also are complex and not practicable in most situations.
- o Ownership of U.S. real estate through a foreign corporation permits its transfer by gift or at death without imposition of U.S. estate or gift taxes. This may be a more important consideration for ownership of personal residences through a corporation than the possible exemption from the capital gains tax on sales. The foreign investor may, however, be subject to such taxes in his country or domicile.
- o Taxation by the foreign investor's own country varies, depending on the country of residence. Most industrial countries tax their residents on worldwide income and would thus tax U.S. rental income. Most countries would not tax income of a foreign corporation owned by a resident shareholder until such income is distributed as a dividend. Many industrialized countries, but not all, tax capital gains. In the countries surveyed, it was possible generally to defer payment of foreign tax by investment through a foreign corporation.
- o A survey of countries in which a foreign national can own real estate indicates that real estate rents are taxed--but that capital gains from the sale of the property almost always can be avoided by ownership through a foreign corporation.

Intergovernmental Exchange of Foreign Investment Information

Monitoring foreign direct investment in the United States, especially real estate, may be enhanced by exchanging information with foreign countries. Such information could be useful in solving the layering problem occurring, for example, in the administration of the Agricultural Foreign Investment Disclosure Act.

Two types of information can be exchanged. The first type is statistical information similar to the type available now from the Department of Commerce's Bureau of Economic Analysis. These data are taken from BE-15 forms, under the International Investment Survey Act of 1976, and include the: (1) nationality of the investor; (2) type of investment, such as sectoral classification employed by the Department of Commerce; (3) value of the initial investment, if a new investment; and (4) financial and operating

data of the investment vehicle. The second type of information is more specific, such as the nature (whether individual, corporate, partnership, or trust) and address of the investor, the directors and officers of an entity, taxes paid, and so forth. An important aspect of these information exchanges is whether the information is to be kept confidential or whether it is to be accessible to other government agencies on the Federal, State, or local levels as well as to U.S. treaty partners.

Some information now is routinely exchanged, and other information is specifically requested by a treaty partner under U.S. bilateral tax treaties. Confidentiality is important for maximum effectiveness of information exchanges. Safeguards in these treaties allow contracting parties to refuse to exchange information. In practice, the 50,000 pieces of information which the United States does receive pursuant to bilateral tax treaties are not fully utilized. The U.S. Government is trying to improve its ability to utilize this information through its own efforts as well as discussions with its treaty partners.

Joint tax audits between the United States and other countries are means of closer cooperation in solving international tax problems, particularly if multinational enterprises and tax havens are involved.

The legislation authorizing social security totalization agreements is a potential model whereby the Department of Treasury would be able to negotiate minitreaties. These minitreaties become effective after a certain date unless Congress expresses its disapproval.

U.S. treaties of mutual assistance in criminal matters indicate that the United States, although slow to engage in international judicial assistance, has taken substantial steps quickly to exchange information and engage in other means of international judicial assistance.

Three types of multilateral European agreements, one of which was never enacted, are potential models. The model which has never become law is a proposed directive to exchange statistical information about capital movements resulting from direct investment. The European Economic Community Directive on common action to combat tax evasion and tax avoidance and the European Convention on Mutual Assistance in Criminal Matters also are potentially useful models.

The United States could take action on intergovernmental exchange of information and allow more disclosure on transnational investments. In particular, action might be taken through the Organization for Economic Cooperation and Development, Declaration on International Investment and Multinational Enterprise and United Nations groups.

Intergovernmental exchange of information is limited by U.S. domestic law. Foreign investors seek anonymity by using various mechanisms, such as entities based in tax havens, foreign trusts, bearer shares, and by layering legal entities. Layers can be penetrated to obtain information, but some solutions require effort and resources. Consideration should be given to the issue of what information is to be discussed and for what purposes.

Secrecy and Disclosure

Of the concerns relating to the feasibility of an information system, none is more important than the right to obtain or withhold information. Unlike personal facts which are protected by statute and the Constitution, land-ownership data commonly are placed in public records. The issue, then, deals with essentially the detail, mode of access, relationship to personal data, and uses of the data. Each of these factors may stir controversy about land records.

Information such as that found in land records is valuable. The title assurance system, for example, mines sources of information in county courthouses, interprets the facts, and markets the data directly. With title insurance, the owner bets on the likelihood of a challenge to his property right. Before the technological explosion in information handling, the title to land was a highly individualized product, but in urban and suburban areas much of the titling function is no longer performed by the individual attorney. Title companies, some local governments, and many real estate marketing firms now utilize the mass handling of data for public benefit and/or profit. Persons, firms, or agencies without rapid access to data are at a disadvantage in carrying out their functions.

It is clear from the legal studies in this report and elsewhere that there are no fundamental legal obstacles to the land information systems envisioned by the four methods reviewed earlier. Limitations on laws preventing or restricting foreign holdings or acquisitions of real estate, if any, would not appear to extend to reporting.

Problems of secrecy and disclosure of landownership have been, since the 16th century, a question of controlling the creation of beneficial or equitable interests in real property. Interest holders who have filed in the public land title records traditionally have not limited their right to assign their interest. An assignment, however informal, will give rise to an undisclosed or unrecorded interest.

Easy assignment of rights is a basic need of our system of private ownership of real property. Yet, ease of assignment does not always result in the equally important security of ownership. Security lies in a disclosure of ownership--that is, putting the community on notice of one's private rights. Thus, private rights depend on their recordation or public disclosure.

Our system of recordkeeping for realty interests allows owners to avoid disclosing their alienage by: (1) unrecorded installment land sales contracts and land trusts in which the title to realty is controlled by two documents, one recorded and one not; (2) future divisions of title, as with crop output or timber contracts; and (3) a blurring of realty interests and investment vehicles such as general and limited partnerships, corporations, and close corporations.

Secrecy in landownership, therefore, is not contrived but is a feature of the American conveyancing system. While it is true that those wishing to avoid being identified as a beneficial owner can do so through a variety of devices, most of the secrecy is the result of the system of recording and property transfer.

For some types of investment vehicles, such as, land trusts, the identity of those interested in the trust will be disclosed only if some special need is shown, such as the need to bring a building up to local housing code standards. Other investment vehicles typically and routinely reveal the identities of those holding major interests in the entity, but present other problems of accessibility. The filing of partnership and incorporation papers often involves the disclosure of information which reveals more about the interests and identity of partners than of shareholders. This disparity might influence an investor's choice of one vehicle or the other. The resulting policy question for the States is whether or not uniformity of information on the identity of the investors using one or the other vehicle might be achieved by a statute which had as its major aim the disclosure of the identity and type of interest of each investor--and which also made the information accessible to the public at one location in each county or State.

Although with some types of investment vehicles such as crop production and timber contracts there may be a question as to whether or not their subject is real property, one solution for many of these problems lies in amending the State recording statutes. The amendments would provide for the recording of documents showing the identities of parties interested in the several types of investment entities. Recording documents such as these would aid in solving conveyancing problems which may arise in future transactions involving the transfer of real property.

The means by which foreign owners may prevent disclosure of their real estate interests do not differ from those of domestic owners. The offshore owner may be an absentee and therefore less susceptible to judicial process, local publicity, and pressures. If the alienage of a beneficial owner of land is to be disclosed because society, through its government, decides that such information is needed, there certainly is a rational basis for such a decision, although some statutory authority must be created and exercised. The nearest approximation to such authority at this time appears to be in Iowa and the U.S. Agricultural Foreign Investment Disclosure Act.

A policy to require complete identity of persons or legal entities with interests in real estate presumably would relate to more general questions of the limits and protections of privacy. To the extent that property owners, by recording their interests, declare publicly an exclusive right to benefit from the property, is there a concomitant duty to reveal their identity? Secrecy may have some monetary or tangible value. If the public creates the value by privileging information, has it the right to control the extent of secrecy or tax it? Fees, charges, or taxes on the right to create and maintain a trust, limited partnership, or corporation might be secrecy taxes, for example. Whether balanced by some legal standard or an economic subsidy or tax, the right to know is weighed against the right not to be known, and the balance that is struck encompasses more than the realm of law or economics.

Foreign Investment as a Form of Absenteeism

Public concerns about absentee owners tend to concentrate on (1) low income and multifamily residential real estate, and (2) farm real estate. Concern

over residential real estate usually is about the quality of improvements and services in relation to rentals. Concern over farmland usually is about efficiency, productivity, conservation of the land, land tenure, and the structure of the community.

With regard to absenteeism, the validity of the absentee landowner is not of major importance. While it is true that foreign investment has increased and has become a popular subject for discussion, there seems little likelihood that foreigners will purchase whole States or cities. Even the "large" purchases that foreigners have consummated are pale compared with overall performance and activity in the land and durable capital markets. The problem thus can be loosely restated as follows: Does the lack of physical proximity between owner and asset have any appreciable effect on intensity of use, stability, efficiency, conservation, and intracommunity relationships? This is the crucial ex post question. There is, however, considerable ambiguity on the ex ante side, too. What determines the extent of absentee ownership? Does the system of real estate marketing favor particular owners? Is real estate unique as an investment? Most of these questions can be answered only after intensive economic inquiry. Highly aggregative data for general classes of owners, investors, and land often are of little use in answering specific economic impact questions.

CONCLUSIONS

The four methods chosen as being potentially feasible in monitoring foreign ownership of U.S. real estate are described for analysis as particular types of data systems. The four methods are intended to provide a range of alternatives whose advantages or disadvantages would depend on levels and types of information sought. From the International Investment Survey Act it is clear that whether or not a real estate data system is chosen, improvements in estimates of direct foreign investment are desirable. From Section 4(d) and from concerns of the Congress and the public at the time the Act was passed, better data on foreign ownership of real estate is desired. Since the deficiencies in data on foreign-held land extend to landownership generally, the study delves into the methods to monitor both foreign investment and landownership.

1. Foreign Investment Data

From the viewpoint solely of improving aggregative data on direct foreign investment, the authorities for current programs of reporting as described under method 2 are generally adequate. The Bureau of Economic Analysis, Department of Commerce, obtains information on foreign real estate holdings from questions on its various foreign investment surveys: (1) the BE-12 benchmark survey, Survey of (Inward) Foreign Direct Investment in the U.S., is a periodic full-count survey of all known foreign direct investors; (2) the BE-13, Report on a Foreign Person's Establishment, Acquisition, or Purchase of the Operating Assets of a U.S. Business Enterprise, including Real Estate, provides initial data concerning new foreign direct investment in the United States; and (3) the BE-15 annual survey, Interim Survey of Foreign

Direct Investment in the U.S., is a sample survey designed to update selected data from the BE-12.

The Office of Foreign Investment in the United States, Department of Commerce, collects and reports on aggregate foreign investment data derived from among such public sources as Securities and Exchange Commission filings, press reports, business publications and State economic development agencies. It also identifies specific real estate transactions from public sources by location, use, purchase price, and name of foreign purchaser.

The reporting of foreign-owned real estate to the Department of Agriculture required by the Agricultural Foreign Investment Disclosure Act can provide supplemental information on one source of foreign direct investment.

Available information indicates that foreign ownership of U.S. real estate is a small part of foreign investment and a small part of the ownership of real estate. For general levels of foreign investment in real estate, with a small amount of detail, current authorities and procedures under IISA and AFIDA appear adequate. It would be desirable to review the objectives and overlapping coverage of the Departments of Commerce and Agriculture programs and to coordinate their separate reporting activities.

2. International Exchange

Monitoring the ownership of real estate is complicated by the layering of control over legal entities such as corporations or trusts. Nominees may obscure the country of origin of funds and location of control. If consistent with the objectives of the U.S. Government and its treaty partners, intergovernmental exchange of information could solve some layering problems and could improve the statistical information on both inbound and outbound foreign investment. Such exchanges of information have precedents in social security totalization agreements, bilateral agreements on enforcing criminal laws, and proposed directives of the European Economic Community on the exchange of statistics on capital movement, and agreements on tax evasion and avoidance. Several alternative procedures are possible if the exchange appears desirable. The possibility of establishing a national policy to foster intergovernmental exchange of information to further aid in monitoring foreign investment in the United States should be examined.

3. Secrecy and Disclosure

Throughout the report, secrecy and disclosure of information and land-ownership emerges as a critical determinant in monitoring landownership. Identification of owners and ownership relations, given present procedures and law, is a substantial technical problem. To identify a particular interest in a particular parcel of land often is difficult in itself. To locate all the land interests of an owner or a class of owners can be a major undertaking. But, where the problem is one of accessing information filed publicly with different State and local officials, mandatory cross-referencing using the existing system of

title records offers a solution to the problem. In other words, the technical problems can be solved with sufficient effort.

Still unanswered are general questions on the limits of the public's right to know or an individual's right not to be known by the very public that protects this anonymous property right. These questions are not merely extensions of the much-studied privacy questions but are also a special concern regarding the nature of property rights in land.

The public disclosure of government reports, aside from the public expense of accessing, may have a negative impact on responses. If the quality of data is the principal concern, individual reports should be confidential, with access limited to other cooperating officials. If the intent of a reporting system is to obtain accurate statistics, it is absolutely necessary to obtain reliable responses. To obtain reliable responses to questions that are sensitive to at least some of the respondents, every possible assurance must be given that the data will be used solely for statistical purposes.

4. Real Estate Information

The substantial interest in the ownership of U.S. real estate by foreign persons extends beyond the improvement of statistics on international capital movement. Concerns about productivity, land price effects, and control over natural resources were some of the reasons supporting passage of the Agricultural Foreign Investment Disclosure Act, for example. Information on real estate transactions, holdings, uses and prices generally is thin in relation to increasing demands for land data. The deficiency in data on foreign owned real state is symptomatic of information about all real estate.

As the evaluation of method 1 concluded, if substantial detail on foreign held real estate is desired, including information on individual holdings, and there is no perceived need for much comparable data on domestically held land, then a specifically directed reporting scheme such as AFIDA is the most effective method for obtaining data. These needs should be carefully reviewed.

The question of the desirability of creating a comprehensive registry of foreign purchases of both commercial and residential real estate, as recommended in a recent report prepared for the Department of Housing and Urban Development, would be a part of this review. If foreign owners of U.S. real estate are to be compared to other U.S. owners, however, supplemental surveys would be needed or other procedures used.

Analysis of impacts of foreign investment in real estate is difficult in the absence of similar data for domestic owners. Much of such data can be found in the local records of registries of deeds, assessors, and planning and regulatory officials. Standardization of records, tied with a system of unique parcel identifiers, potentially could supply all the information needed for analysis while serving local and State needs. Such a network multipurpose data system is economically impractical for foreign ownership data alone. Until such improved multipurpose land data systems are numerous enough in the United States

as to provide useful nationwide coverage, the comprehensive information on landownership will depend upon periodic, sample surveys, sufficient at least for State level estimates.

To determine the optimal means of meeting requirements for rural and urban land use data, including the possible establishment of a Federal, State and local cooperative system, small staffs located in the Department of Agriculture and Housing and Urban Development could serve as focal points for this effort.

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